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دولة إرتريا  
وزارة الشؤون الخارجية

The State of Eritrea  
Ministry of Foreign Affairs

Intellectual property rights; namely Trade Mark, Patent, Industrial Design and Copy Right have developed in recent few decades as a result of innovations which are crucial to the development of the globe. Thus, the Eritrean legal system doesn't fully cover all aspects of the intangible rights, as such; these rights were not fully protected against infringements as compared to the protection accorded to intellectual property right holders by the Convention. Nonetheless, in section three of the Commercial Code of Eritrea Articles 135- Articles 138 deal with Trade Name. Section 4 Articles 140 and 141 Trade Mark is defined as distinguishing Mark and provides protection to such a mark. It also prohibits unfair trade practice.

Recently, the Ministry of Justice has drafted new laws (Commercial Code, Civil Code, Penal Code Civil and Criminal Procedure Codes and Law of Evidence). These drafted Codes are expected to address and solve new legal concepts as well as Eritrea's international obligations. Therefore, though it is too early to site provisions from the drafted Codes, chapters have been devoted to address the issue of Intellectual Property Rights compatible to the commitments of WASPO member States.

Below are some Important Provisions of the Provisional Commercial and Civil Codes of Eritrea which are in force since the independence:

Articles from the Provisional Commercial Code of Eritrea, regarding Trade Mark and Patent.

Art. 132- Unfair commercial competition.

A trader may claim damages under Art. 2057 of the Civil Code from any person who commits an act of competition which amounts to a fault.

Art. 133. - Cases of unfair competition

1. Any act of competition contrary to honest commercial practice shall constitute a fault. Anything that diminishes the value of a business

2. The following shall be deemed to be acts of unfair competition:

- a. any acts likely to mislead customers regarding the undertaking, products or commercial activities of a competitor;
- b. any false statements made in the course of business with a view to discrediting the undertaking, products or commercial activities of a competitor.

Art.134. - Effect of unfair competition.

1. The court may, in cases of unfair competition:

- a. order that damages be paid by the unfair competitor; and
- b. make such orders as are necessary to put an end to the unfair competition.

2. The court may in particular:

- a. order the publication, at the costs of the unfair competitor, of notices designed to remove the effect of the misleading acts or statements for the unfair competitor, in accordance with Art. 2120 of the Civil Code;
- b. order the unfair competitor to cease his unlawful acts in accordance with Art. 2122 of the Civil Code.

**a. Provisions relating to Trade Mark**

Section 3. Trade-Name

Art. 135. 7- Definition.

1. A trade-name is the name under which a person operates his business and which clearly designates the business.
2. The relevant provisions of Book II of this code shall apply to firm-names and business organizations.

Art. 137. Trader's Name

a. Every trader may carry on his trade under his family name with or without his patronymic:

Provided that Art. 45 of the Civil Code shall apply where such name or patronymic is likely to create confusion in a manner prejudicial to the interests of another trader.

b. Where proceedings for unfair competition are instituted by reason of confusion created by the use of the trader's name, the court may order that damages be paid by the trader who created confusion. and may, in addition order such trader to include his surname or patronymic in his trade-name so as to obviate confusion.

Art. 138, - Assumed name.

1. Every trader may, carry on his trade under an assumed name provided such name is not likely to create confusion in a manner prejudicial to the interests of another trader.
2. Where proceedings for unfair competition are instituted by reason of confusion created by the use of an assumed name, the court may order that damages be paid by the trader who created confusion and may, in addition, prohibit such trader from using the assumed name.

Art.139. Assignment of trade-name.

1. The trade-name may not be assigned except together with the business to which it refers
2. The trade-name may not be used by the new trader unless it is followed by the name of such trader and by the words "successor" or "lessee". The new trader may only use his own name in signing commercial papers.

#### Section 4. Distinguishing Marks

Art. 140.- Definition.

1. A distinguishing mark is the name designation sign or emblem affixed on the premises where the trade is carried on and which clearly designates the business.
2. The use of distinguishing mark is not compulsory

Art. 141. Choice of distinguishing mark.

A trader may choose any distinguishing mark.

Damages may be claimed on the ground of unfair competition where the distinguishing mark is likely to create confusion in a manner prejudicial to another trader having used an identical or distinguishing mark.

#### **b. Patents and Literary or Artistic Copyright**

Art 148. - Patents.

1. A business may consist of patents relating to registered inventions, trade-marks, designs and models.
2. Patents shall be subject to the provisions of special laws.

#### **c. Articles from the Civil Code regarding Copy Right**

Art.1647.-Attribution of the right.

- (1) The author of a work of the mind shall have on the work he created, by the mere fact of his creation, an incorporeal right of ownership,
- (2) He shall have such right regardless of the nature, form of expression, merit or purpose of the work.
- (3) He shall have such right notwithstanding that he executed the work in pursuance of a contract of employment or a contract for the performance of a project entered into with a third party.

Art. 1648.- Works of the mind.

The following works shall be deemed to be works of the mind:

- (a) literary works such as books, booklets, articles in reviews and news papers, lectures, speeches, sermons, theatrical and other dramatic works; and
- (b) musical compositions with or without text, dramatic-musical works, radio phonic or radio visual works, choreographic works or pantomimes the production of which is reduced to writing or otherwise; and
- (c) the works of the figurative arts such as drawings, paintings, engravings and sculptures, as well as photographic and cinematographic works; and
- (d) illustrations, maps, plans, sketches, plastic works pertaining to geography, topography, architecture or other sciences; and
- (e) any other work created by the intelligence of their author and presenting an original character.

Art. 1649.- Translations and adaptations.

Without prejudice to the rights of the author of the original work, translations, adaptations, musical arrangements and other renderings of a literary or artistic work shall be protected as original works.

Art. 1650.- Encyclopedia and anthologies.

Collections of literary or artistic works such as encyclopedia or anthologies which by the choice or arrangement of the material constitute intellectual creations shall be protected as such without prejudice to the rights of the authors over each of the works included in such collections.

Art. 1651.-Official text.

- (1) official texts of a legislative, administrative or judicial nature shall not be subject to the provisions of this Title.
- (2) They may be freely reproduced.

Art. 1652.-Right of publication.

- (1) Only the author shall have the right to publish his work.
- (2) After his death, this right shall pass to the person named by him or, in default of such person, to the heirs of the author.

(3) Where the heirs do not agree settle the matter on the application of publication, the court shall settle the matter on the application of any of them.

Art.- 1653.- Production and reproduction of the work.

(1) Only the author shall have during his life the right to produce his work.

(2) He shall alone have during his life the right to reproduce it.

Art.-1654.-Adaptations.

(1) Only the author shall have during his life the right to authorize the adaptation of his work to the theatre, cinematography or television, or any other kind of adaptation.

(2) A work shall be regarded as an adaptation of a third part's work where it explicitly refers to the said work or it is obvious, from the circumstances of the case, that it closely derives its inspiration there from.

(3) A parody, pastiche or caricature shall not be regarded as an adaptation of the work.

Art.1655.- Translations.

(1) An author cannot object to the translation of his work.

(2) A translation made without the authorization of the author shall expressly state this fact at the beginning of the work.

(3) Failing such a statement, it shall be deemed to be prejudicial to the author's rights.

Art. 1656.-private performances free of charge.

The author may not forbid private performances of his work given free of charge at a family gathering or in a school.

Art. 1657.-Articles and information of topical interest.

(1) Articles of topical interest published in newspapers and reviews any reproduction was expressly reserved.

(2) The source shall always be clearly stated.

(3) Daily news articles on current events which are mere press information may be freely produced.

Art.1658.-Public speeches.

Speeches delivered in political assemblies, at public meetings or on the occasion of official ceremonies may be freely reproduced by the press, whether printed or broadcasted, during fifteen days from the day on which they were made.

Art. 1659.-Collection of speeches

only the author shall have the right to publish his speeches and articles in book form or to issue a collection thereof.

Art. 1660. Limitation of speeches or articles.

- (1) The author cannot forbid analyses and press reviews of his work.
- (2) Copies or reproductions of the work made in a single copy shall be permitted where they are intended for private use only.

Art.1661.-Quotations.

The author cannot forbid short quotations from his work provided they do not exceed, in the work in which they are included, forty lines in the case of a poetical work or ten thousand letters in the case of any other work.

Art. 1662.-Photographic works.

- (1) Photographic works shall be protected where they form part of a collection or are published in a book.
- (2) In other cases, they shall not be protected unless they bear the name and address of the author or his agent.

Art. 1663.-Assignment of the work.

- (1) the incorporeal ownership of the author shall be independent of the ownership of the material object which constitutes the protected work.
- (2) The rights specified in this Title shall not vest in the acquirer of the object by the mere fact of his acquisition.
- (3) The author may not require the owner of the material object to place this object at his disposal so as to enable him to exercise his rights.

Art.1664.-Reference to rules governing contracts of publication.

The conditions on which literary or artistic rights of ownership may be assigned by the author to third parties shall be as provided by the Chapter of this code relating to "contracts of publication" (Art. 2672-2697).

Art. 1665.-Alteration of a work.

Notwithstanding any stipulation to the contrary, the author may prevent his work, if altered by a third party, from being presented as his own.

Art. 1666.-Ascertainment of the author.

- (1) Without prejudice to any proof to the contrary, the person in whose name the work was published shall be deemed to be the author thereof.
- (2) The author may claim the benefit of the rights deriving from the provided that there is no doubt as to his identity.

Art.1667.-Anonymous works.

As regards anonymous and pseudonymous works other than those mentioned in

Art.1666, the publisher whose name appears on the work shall without further proof be deemed to represent the author.

Art.1668.-works produced by several authors.-1. Rights of co-authors.

(1) A work produced as a result of the cooperation of several authors shall be jointly owned by them.

(2) Author's rights shall be exercised by common agreement between the co-authors.

(3) Where each of the authors contributed a different type of work, each of them may, unless otherwise agreed, utilize separately his personal contribution provided that such utilization is not detrimental to the use of the common work.

Art.1669.-2. Protection of third parties.

(1) where a work has been published under the name of a single author, third parties shall be justified in assuming that the said author is the sole author of the work.

(2) Rights of co-authors shall not affect them.

Art.1670.-Heirs of the author.-1.Pecuniary rights.

(1) The author's right to authorize the production, reproduction or adaptation of his work may, after his death, be exercised by his heirs for a period of fifty years from the time of the publication of the work.

(2) Where the heirs do not agree, the courts shall settle the matter on the application of any of them.

Art.1671.-Moral prejudice.

The right to prevent a work which has been altered by a third party from being attributed to the author may be exercised individually by the author's spouse, ascendants, children and grandchildren during their life.

Art.1672.-Posthumous work.

A work published after the death of its author be protected for a period of fifty years as from the date of publication.

Art.1673.-Rights of public authorities.

(1) Public authorities may in the general interest, notwithstanding the author's opposition, authorize the presentation or reproduction of a work of its adaptation, after such work has been published by its author or his heirs.

(2) The conditions and forms of such authorization shall be determined by a special law providing in particular for fair compensation to the author.

(3) In no circumstance may public authorities authorize the alteration of a work.

Art. 1674.-Protection of literary or artistic rights of ownership.

(3) any person whose right of literary or artistic ownership is infringed may demand the cessation of such infringement and the destruction of the copies or adaptations of his work made in breach of the law.

(4) He may in addition claim damages for the moral and material prejudice caused to him.

1. (5) The conditions on which he may act shall be as specified in the Title of this Code relating to "Extra-contractual liability and unlawful enrichment" (Art.2027-2178).