

Trademark Law: Articles 61-95 of Trade Law No. 68 of 1980

Pursuant to Trade Law No. 68/1980, the Kuwaiti legislator regulates the protection of trademarks in Articles 61-95. It includes a definition of the trademark which is not registrable as well as maintaining the trademarks register, registration procedures, opposition, offences concerning trademarks and the competent court for this and the prescribed fees on extracts peculiar to marks.

Trademarks Law and Trade Indications

Section one Trademarks and their Registration Procedures

Article 61

A trademark is anything which takes a distinctive form whether in words, signatures, letters, figures, drawings, symbols, titles, seals, representations, engravings or any other mark or a combination thereof when used or is intended to be used in distinguishing goods or products for the purpose of indication that they are of the owner of such mark by virtue of manufacture, selection, trading or offering for sale.

Article 62

The following may not be a trademark and may not be registered as such:

1. Marks devoid of any distinctive character, marks consisting of indications that are the mere denominations in practice of the goods or products, or customary drawings and ordinary pictures of the goods and products.
2. Any expression, drawing or mark against public morals or public order.
3. Public emblems, flags and other symbols pertaining to the state, United Nations or anybody thereof or any state having reciprocity of treatment with Kuwait or any imitation of such emblems.
4. Symbols of the Red Crescent or the Red Cross and other similar symbols as well as marks which are imitations thereof.
5. Marks identical with or resembling symbols of a purely religious nature.
6. Geographical names where the use thereof may cause confusion as to the origin or source of goods.

7. The name, surname, photograph or emblem of a third party, unless his prior approval to use such mark has been obtained.
8. Statements pertaining to titles of honor which the applicant cannot prove that he is lawfully entitled to.
9. Marks which may mislead the public or which contain false indications as to the origin or other characteristics of the products as well as marks embodying an imaginary imitated or forged trade name.
10. Marks which the Boycott of Israel Office decides that it is identical or similar to an Israeli mark, symbol or emblem.

Article 63

There shall be prepared a register in the concerned ministry, called "The Register of Trademarks", wherein shall be entered all marks with names and addresses of their proprietors and the descriptions of their goods as well as transmissions, transfers or assignments. The public have the right of access to this Register, and certified copies of any entry may be obtained upon payment of the prescribed fees.

Article 64

Any person desiring to use a mark in order to distinguish his goods of his own production, manufacture or selection or which he trades in or offers for sale, or intends to trade in or offer for sale, may apply for its registration in accordance with the provisions of this Law.

Article 65

1. Any person who registers a trademark shall be deemed the exclusive owner thereof.
2. The ownership of a trademark may not be contested if it is used continuously by the person who registered it for at least five years from the date of registration unless a case is filed as to its validity.

Article 66

A trademark application shall be submitted to the Department of Trademarks Register under the conditions and terms provided for in the implementing regulations of such register.

Article 67

A trademark may be registered only in respect of one or more of the classes of products specified in the implementing regulations.

Article 68

Where two or more persons apply simultaneously for the registration of the same trademark or closely similar or identical marks, in respect of the same class of products, the registrar shall suspend all such applications until an assignment approved by all the parties concerned in favor of one of the disputing parties is produced or until a final judgment is rendered in favor of one of them.

Article 69

The Registrar may impose whatsoever restrictions and modifications he may consider necessary for defining and clarifying the trademark in a manner as to prevent confusion with another mark already registered, or for any other reason which he may deem valid.

Article 70

Where for any reason the Registrar refuses to register a trademark or suspends registration pending the fulfillment of certain restrictions and modification, he shall inform the applicant in writing of the grounds for such decision.

Article 71

1. Any decision issued by the Registrar whereby he refuses registration or suspends it, pending the fulfillment of a condition, may be appealed by the applicant to the Court of First Instance within thirty days as from the date of serving such decision upon him. The court may confirm, quash or amend the decision.
2. Where the applicant does not appeal against the decision within the prescribed term and does not act according to the conditions of the register within such term, he shall be considered to have abandoned his application.

Article 72

1. When the Registrar accepts a trademark, he shall, before registration, publish it in three consecutive issues of the Official Gazette.
2. Any person interested shall be entitled, within thirty days as from the date of the last publication, submit to the registrar a written notice of his opposition to registration. The Registrar shall then serve a copy of such notice of opposition upon the applicant for registration. The latter shall submit a written counter statement of the opposition to the Registrar within thirty days. If the counter-statement is not received within the prescribed term, the applicant shall be deemed to have abandoned his application.

Article 73

1. The Registrar shall, before deciding on the opposition, hear both parties or the party requesting such hearing.
2. The Registrar shall issue a decision accepting or refusing the registration. In case of acceptance, the Registrar shall determine whatever limitations he considers necessary.
3. Any interested party may, within ten days from being notified of the Registrar's decision, appeal against the decision to the court who may confirm, repeal or amend such decision.

Article 74

If the Registrar finds that the opposition to the registration of the mark is not serious and decides to register it, he shall, notwithstanding any objection to his decision, issue a grounded decision to proceed with the registration formalities.

Article 75

1. The mark when registered shall be validly registered as of the date of submission of the application,
2. and the proprietor of the mark shall, on completion of the registration, be furnished with a certificate containing the following particulars:
 - a. Serial number of the mark.
 - b. Date of application and date of registration.
 - c. Name, surname, domicile and nationality of the proprietor of the mark.
 - d. A true representation of the mark.
 - e. Statement of the goods or products for which the mark is registered.

Article 76

The registered proprietor of a mark may at any time, apply to the Registrar to omit, to add to, or amend such trademark in any manner not substantially affecting the identity of the same and the Registrar shall issue a decision thereon in accordance with the conditions laid down for the original applications for registration and such decision shall be subjected to appeal as aforesaid.

Article 77

1. The protection period which the registration of a trademark entails, shall be ten years. The owner shall secure renewal of the protection for further terms if he submits an application for renewal during the last year in conformity with the terms and conditions provided for in Article 66.
2. The Registrar shall, during the month following the expiration of the

protection period, notify the owner of the trademark in writing, at the address appearing in the register, of the expiration of the validity thereof. If the owner of the mark fails to apply for renewal within three months following the expiration of the protection period, the Registrar shall of his own accord strike the mark from the register.

Article 78

1. Without prejudice to Article 65, the Registrar or any person interested may apply for a judgment to strike from the register any unlawfully registered mark. The Registrar shall strike off the registration when a final judgment is produced to him.
2. The court shall, on the strength of a request by the Registrar or any person interested, order the addition to the register of any particulars the recording of which had been omitted or the striking off or the amendment of any particulars appearing in the register that have been unlawfully entered or are inconsistent with the fact.
3. The Registrar shall decide on the cancellation of those marks which the Boycott of Israel Office in Kuwait decides are identical or similar to an Israeli mark, symbol or emblem, and the non-registration of the same if it was not registered.

Article 79

Except when the proprietor of a mark produces justification for the non-use of his mark, the court shall upon application made by any interested person order the cancellation of the registration if it is established that the mark had not been effectively used for five consecutive years.

Article 80

Cancellation or renewal of a registration should be published in the Official Gazette.

Article 81

Where the registration of a mark is cancelled, it shall not be registered again for the same products in favor of a third party except after three years have elapsed as from the date of cancellation.

Article 82

Assignment, mortgage or attachment of a mark shall only be made together with the firm or enterprise using the mark for distinguishing the products thereof.

Article 83

1. Unless otherwise agreed, the assignment of the firm or enterprise shall include the marks, which are considered as closely related thereto, that are registered in the name of the assigner.
2. Except where otherwise agreed, when the firm or enterprise is assigned without the mark, the assigner shall have the right continue to use, manufacture or trade in the same products for which the mark had been registered.

Article 84

The assignment or mortgage of a mark shall not be deemed proof against third parties unless entered in the register and advertised in the Official Gazette.

Article 85

The competent ministry shall issue implementing regulations for the register of trademarks in which it points out the detailed provisions concerning the following:

1. Organizing the trademark registration and keeping of registers.
2. Positions, conditions and appointments concerning the registration procedures.
3. Dividing all the products, for registration purposes, into classes according to their type or origin.
4. Prescribed fees for delivering extracts and certificates and all different works and preconditions provided for in this Law.

Section Two Trade Indications

Article 86

Each clarification related directly or indirectly to the following shall be considered as a trade indication:

- a. The number, quantity, dimension, volume, weight or capacity of the goods.
- b. The place or country where the goods were manufactured or produced.
- c. The method of manufacture or production of the goods.
- d. The elements incorporated in the goods.
- e. The name and particulars of the producer or manufacturer.
- f. The existence of patents or any other industrial property rights or any privileges, prizes or commercial or industrial characteristics.
- g. The name or form by which the goods are known or valued.

Article 87

The trade indication should be true in all respects, whether it is laid down on the products or on shops, stores, or in their addresses or on envelopes, invoices or letter paper, means of advertisement or any other means used in the exposition of the goods to the public.

Article 88

1. It shall not be permissible to put the merchant's name or his address on the products if they have come from countries other than those where the sale takes place, unless the name is accompanied by an exact statement, in clear letters, showing the place or country of manufacture or production.
2. Persons residing in a locality with a reputation for in producing or manufacturing certain products, who trade in similar products from other areas, shall not put their marks on these products if they could mislead the public as to the source of these products even if the marks do not include the persons' names or addresses unless the necessary measures will be taken to prevent ambiguity.

Article 89

The manufacturer shall not attach the name of the locality at which his principal factory is situated to the products made to his account in another locality, unless this name is accompanied by a statement of the latter locality in a manner that precludes any doubt.

Article 90

1. Mention shall not be made of prizes, medals, diplomas, or honorary degrees of any kind except in the case where the products conform exactly to these grants and to the persons and their acquired commercial name or those who have acquired the rights thereof, and then it will be necessary to include an authentic statement as regards dates, exhibitions or contests where the grant has been made.
2. Whoever has been a partner in the exhibition of products shall not make use for his own special products of those characteristics that have been awarded to the co-partners unless he shows clearly the source and nature of these characteristics.

Article 91

1. If the quantity, dimensions, volume, capacity, weight, source or constituent elements are among the factors that are important in the evaluation of the products, a Ministerial Decree shall be issued precluding the importation, sale or exposing for sale of the product, unless it bears a statement or more of the above-mentioned items.
2. The competent minister's decree shall define the manner of putting these statements on the products and the steps that must be taken on failing to do this; all such statements are to be written in the Arabic language.

Section Three Penalties

Article 92

Any person who commits any of the following acts shall be punished by a term of imprisonment and by a fine not exceeding KD 600 or by both penalties:

1. Counterfeits a mark lawfully registered or imitates it in such a manner as to deceive the public, or mala fide uses a counterfeit or an imitated mark.
2. Mala fide puts on his product a mark owned by another.
3. Sells or exposes for sale or circulation or possesses for the purpose of sale any products bearing any counterfeit or imitated mark.
4. Violates of the provisions of Articles 87 and 91 concerning trade indications.

Article 93

1. The proprietor of a trademark may, at any time, even before instituting any action, make a petition supported by an official certificate testifying the registration of the mark to the competent Judge for an injunction allowing the taking of the necessary precautionary measures and in particular the attachment of equipment or tools which are being or have been used in the commission of the offence as well as the attachment of any products, goods, signboards, envelopes, paper, etc. on which the mark, the subject of the offence, may have been put.
2. Such attachment may be ordered when importing the products from abroad .
3. The injunction of the Judge may include the delegation of one or more experts to assist the bailiff in this duty and to oblige the applicant to submit a warranty.

Article 94

The attachment procedures mentioned in the aforementioned Article shall be deemed null and void if they are not followed - within eight days as from effecting the attachment - by a suit against whom these procedures were taken.

Article 95

1. In any action, the Court shall be entitled to order the confiscation of the attached items or which may be attached later either for the deduction of their price from the damages or fines, or for the disposal thereof in any other manner which the Court deems fit.
 2. It may also order the destruction of the unlawful marks or where necessary order the destruction of the products, envelopes, packing material, signboards, catalogues and any other items which bear those marks or illegal statements and the instruments and materials used in the particular act of counterfeiting. The Court may issue an order with respect to all the above matters even in the case of acquittal.
 3. The Court may also order the publication of the judgment in the Official Gazette at the cost of the party against whom judgment has been rendered.
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