

Law No. 23 of 1378 P.D. corresponding to 2010

On Commercial Activities

In implementation of the main resolutions of the General People's Congress in its annual session for the year 1377 P.D.,

After reviewing the declaration on the Establishment of the Authority of the People,

The Great Green Charter of Human Rights of the Jamahiriyan Era,

The law No. 20 of 1991 on the endorsement of freedom,

The law No. 1 of 1375 P.D. on the by-laws of People's Conferences and Committees,

The Commercial law and its amendments,

The law No. 40 of 1956 on Trademarks and its amendment,

The act No. 73 of 1958 on weights, measures and standards,

The law No. 2 of 1962 on commercial data,

The law No. 38 of 1968 on imports and exports,

The law No. 65 of 1970 on implementing some provisions in respect of traders and commercial companies and supervision thereon and its amendments,

The law No. 64 of 1971 on imports,

The law No. 110 of 1975 on implementing provisions related to authorities, public corporations and companies of the public sector,

The law No. 17 of 1977 on the organization of trade practices,

The law No. 8 of 1984 on rules in respect of trade and its amendment,

The law No. 9 of 1985 on some sentences in respect of "Tasharukiat" and its amendment,

The law No. 8 of 1988 on sentences related to economic activity,

The law No. 13 of 1989 for price control and its amendment,

The law No. 9 of 1992 for performance of economic activities,

The law No. 15 of 1423 PB. on implementing some provisions related to shareholding companies wholly or partially owned by the community,

The law No. 4 of 1425 PB. prohibiting speculation economy and its amendments,

The law No. 4 for 1426 PB. on organizing the import and distribution of goods,

The law No. 21 of 1369 P.D. for specifying certain provisions for performing economic activities and its amendment,

The law No. 6 of 1372 P.D. for organizing trading agencies works,

The law No. 3 of 1374 P.D. on public sector companies,

The law No. 2 of 1375 P.D. on organization of inspection,

The law No. 3 of 1375 P.D. on the establishment and organization of the Financial Audit Office,

The law No. 4 of 1372 P.D. regarding Chambers of Commerce & Industry and the General Union of Chambers,

The law No. 9 of 1378 P.D. on Investment Promotion,

The law No. 11 of 1378 P.D. on Capital Market,

The law No. 12 of 1378 P.D. on Labor Relations,

**The General People's Congress
Has drafted the following law**

**Book Ten
Trademarks and Commercial Data
Chapter One
Trademarks**

Article (1228):

Definition

A Trademark is any sign distinguishing a product or a service from the others, including in particular, distinctive names, signatures, words, letters, numerals, drawings, symbols, trade names, fiscal and official stamps, pictures, protruded engravings, and combination of colors in a specific and distinctive form. A Trademark may be a combination of any of the mentioned elements and it could also be a sound.

Article (1229):

Instance Causing the Property Right

According to the provisions of this chapter, the sole proprietor of a trademark is the person who registers that trademark. He shall be the sole owner and entitled to the exclusive use of that trademark with regards to the products, goods or services for which it was registered, and always has the right to take all procedures including measures to ensure the protection of the trademark. The ownership of a trademark is 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 (1230):

Trademark Office

An office shall be established in the specialist sector to be called The Trademarks Office which is competent in accepting applications, records keeping and granting certificates which indicate the registration, according to the provisions of this chapter.

Article (1231):

The Right to Register a Trademark

Any natural or juristic person and companies under establishment have the right to file an application at the Trademarks Office to register a trademark according to the provisions of this chapter.

This right shall also be given to foreigners who have a real activity center in one of the countries members in the World Intellectual Property Organization or who apply reciprocity to Libya.

Article (1232):

Registration Hurdles

The following shall not be entitled to registration as a trademark or an element thereof:

1. Marks having no distinctive signs of authenticity or consisting of phrases, words or titles which are by custom assigned to the products or to any ordinary drawing or pictures thereof.
2. Marks which are already registered or a similar registered trade mark, as well as logos and trade names owned by others or proved to be fake or forged.
3. Marks which are inconsistent to public order or morality.
4. Public emblems, flags and other emblems pertaining to a country or other countries, regional or international organizations, as well as any imitations thereof.
5. Marks which are identical with or similar to symbols of religious character.
6. Symbols of the Red Crescent or the Red Cross or other similar symbols, and marks which are mere imitations thereof.
7. Pictures or mottos of other persons unless they approve on their use.
8. Information of honorary titles which the applicant didn't prove his entitlement.
9. Names and geographical indications which may mislead others or which contain any misstatements about the origin or description of the goods and services.
10. Official signs and stamps of any country who applies reciprocity to Libya for the control or security of goods and services where the trademark containing such signs or stamps is intended for use on goods or services of the same or a similar kind.

Article (1233):

Historical Monuments

Engineering drawings of buildings and other historical monuments, as well as various art works may not be taken as a trademark, except with the permission of the right holder.

However, if the engineering drawing is a famous historic monument indicating the source of a good or service, any person may take it as a trademark, provided that an amendment should be applied to distinguish it from other marks that carry the same historic monument.

Article (1234):

Famous Mark

A mark is considered famous if it reminds the public of a product or service it represents, even if they are not its clients. However, a well known mark among its customers only does not make it famous.

Article (1235):

Protection of a Famous Mark

A famous mark is protectorate its owner in Libya even without legal filing and he may object the filing. Moreover, he may claim compensation for the damages caused to him as a result of unfair competition, the mark should be filed with the provisions of the law in Libya in order to proceed with a criminal case if the famous mark is counterfeited or imitated in bad faith.

Article (1236):

Registration Refusal

The Trademarks Office must reject the registration of a mark identical to a famous mark.

The same provision shall apply to applications intended for goods or services which are not identical to those of the famous mark, where the use of the mark in relation to those non-identical products is meant to lead people believe that a connection exists between the owner of the famous mark and those goods and services.

Article (1237):

Collective Mark

Any moral person or a collective entity have the right to file a collective trademark to distinguish a product or service to a group of people even where such entity has no commercial enterprise of its own, and each member of this entity has the right to use the collective mark.

A collective mark shall not be registered unless after that entity determining the organized conditions for this common use, and in particular to ensure the quality of products, and the rights and obligations of members and the sanctions resulting in case the use of the collective trademark in a way that does not observe the agreed terms. This mark is not transferable.

Article (1238):

Quality Mark

The authorized entities by the competent authorities for practicing control or examination of products have to register marks which shall be competent to give indications on the monitoring procedure in respect of their origin, components, method of manufacture, quality, authenticity or any other distinctive characteristic. The owner of a mark may authorize others to use his mark in accordance with the conditions specified by him, and also has the right to withdraw it which makes the use of the mark after withdrawal illegal, and the penalties provided in this chapter shall apply to the violator.

Article (1239):

Associated Marks

If the marks owned by one person are the same or similar and dedicated for goods or products of the same or a similar kind, then marks will be considered as associated. Associate includes the mark and its distinctive character elements, which requires registration separately.

Chapter Two:

Registration, Publication and Cancellation Procedures

Article (1240):

Application for Registration

The application for the registration of a mark shall be submitted to the trademarks office in the ways and conditions by Law.

Article (1241):

Registration Range

A mark shall be registered in respect of one or more of the categories of specified goods or services in accordance with this chapter.

Article (1242):

Registration Scope

The legal protection of a mark includes the products and services mentioned in the application, as well as similar products and services. The products and services are considered similar if converged at its function, use, or the impression left among the public as from the same source.

Article (1243):

Priority Filing

Where an application for registration of a mark is filed in one of the countries members in the World Intellectual Property Organization or a country which extends reciprocity to Libya, the applicant, or his rightful successor, may within six months from the date of filing the application file at the Trademarks Office in Libya a similar application for the same mark, covering the same products and services included in the previous application, in accordance with the terms and conditions prescribed by this chapter and the implementing regulations stipulated in article (1270). In such a case, the priority date shall be that of the first application in the foreign country.

Article (1244):

Filing Multiple Applications

Where two persons or more apply for the registration of the same or similar marks of the same category of products or services at the same time, such application shall be suspended until one of them submits an authenticated deed of relinquishment from the other disputants or a res judicata (claim preclusion) judgment in his favor.

Article (1245):

Additional Requirements

The Trademarks Office shall define the restrictions and amendments in order to define a mark and render a mark clearly for the purpose of avoiding misconception with other registered mark or filed its registration application. In the event of rejection or qualified acceptance, the office shall notify the applicant by registered letter within thirty days as from the date of issue 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 fulfil the conditions required by the office.

Article (1246):

Complaint Against Decision

The applicant may file a complaint against a decision of the trademarks 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 such notice. The aforesaid complaint shall be submitted to a committee to be formed by the Competent Minister, and may file appeal against its decision before administrative Judicial at the Appellate Courts. The implementing regulations stipulated in article (1270) shall prescribe the rules of establishing such a committee, as well as the procedures for the submission and consideration of such appeals and the decision thereon.

Article (1247):

Mark Publication

In the event of acceptance of the trademark, the Trademarks Office shall bring it to public notice in accordance with the provisions of this chapter. Any person concerned may submit to the Trademarks office a written notification of his objection to the registration of the trademark together with the grounds thereof within the term prescribed under the implementing regulations stipulated in article (1270). The applicant for registration shall submit to the office his written response on the objection within the term prescribed under the implementing regulations stipulated in article (1270), otherwise shall be deemed to have relinquished his application for registration. The office shall motivate its decision on the opposition stated in

the second paragraph of this article after hearing both parties. In its decision of acceptance, it may require the applicant to fulfill any requirements it may deem necessary to register the mark. The applicant and may file appeal against its decision before administrative Judicial at the Appellate Courts.

Article (1248):

Mark Registration

The registration of a mark is approved by a decision from the office and the registration will take effect from the date of filing the application. The registration shall be published in the manner prescribed under the implementing regulations stipulated in article (1270).

Article (1249):

Mark Registration Certificate

The office shall grant the mark's proprietor a certificate containing the following information:

1. Serial number of the mark.
2. Date of application and date of registration.
3. Trade name or the name, surname, domicile and nationality of the mark's proprietor.
4. A true copy of the mark.
5. Statement of the products or services covered by the trademark.

Article (1250):

Mark Amendments

Any proprietor of a registered trademark may submit an application requesting any modifications that do not essentially affect the substance of the mark. He may also request a modification by deletion without any concomitant addition to the statement of products covered by the mark. The decision to accept or reject the request for modification shall be subject to the same conditions prescribed for the acceptance of the original application for registration. The prescribed provisions for opposition, complaint, appeal and publication shall apply to such decisions

Article (1251):

Consult the Marks

Any person may apply to consult the registered trademarks or obtain extracts or copies of entries in the register, according to the rules, procedures and fees prescribed under the implementing regulations stipulated in article (1270).

Chapter Three:

The Disposition of the Mark

Article (1252):

Independent Mark Disposition

The transfer of the mark's ownership, its mortgage, decision of usufruct or seizure with or without the commercial enterprise or exploitation project which uses the trademark to distinct its product and services can be done. In the case of transmission of the mark alone, the assignor and the assignee must take the necessary procedures to protect others in the manner prescribed under the implementing regulations.

Article (1253):

The Disposition Range

The disposition of ownership of a commercial enterprise or an exploitation project shall entail all marks registered in the name of the assignor or which may be deemed closely connected to the enterprise or project unless otherwise is agreed. Should the commercial enterprise or exploitation project ownership be transferred without the mark, the assignor may continue to produce and trade in the same products in relation of which such trademark was registered unless otherwise is agreed.

Article (1254):

Partial Transfer

In cases where the mark is transferred to a third party, the transfer may not be partial or related to certain products or services covered by the transferred mark without the others and so for the same category or similar category. The transfer shall not be limited geographically, but also includes the transfer of mark in every territory of the country.

Article (1255):

In Return of Mark Transfer

Transferring or replacing a mark may be done in return of a specific amount of money or a certain percentage of the deal size amount, and both parties are free to determine the payment; whether by installments or in one lot. The trademark transfer and utilization contract should govern its added value once the contract between the two parties is finished.

Article (1256):

Evidence of Use

The transfer of the ownership of a trademark or the right to benefit from its usage 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 implementing regulations of this law.

Article (1257):

Protection Period

The protection period of a registered trademark shall be ten years, renewable for an identical period or periods upon request of its owner and every time within the last year of the protection period. The owner of the mark may request a renewal of the protection period within six months commencing from the date of expiry of protection thereof, otherwise the trademarks office shall cancel the trademark. A trademark shall be reregistered after being cancelled in favor of its owner exclusively within three years from the date of the cancellation according to the prescribed conditions and same procedures of registration.

Article (1258):

Cancellation of a Mark

The court of first instance may, upon the demand 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 mark shows a reasonable cause for nonuse. Reregistration of a cancelled trademark cannot be done unless after a period of three years from the date of cancellation.

Article (1259):

Reregistration

Where the cancellation of a mark is in response to an enforceable court order invalidating the registration of a mark, such a mark may be registered to the right holder once cancelled.

Article (1260):

Registration in Bad Faith

If a mark is registered in bad faith, such as the utilization of relations of concerned parties or preempt the outcome of the negotiations between them, the concerned person should claim a cancellation of the registration.

Article (1261):

Cancellation and Renewal Publication

The cancellation of the registration or its renewal should be published in the way which the implementing regulations shall stipulate for this law.

Article (1262):

Registration Corrections

The court of first instance may, upon the application of any person concerned, order the addition of any entry which would have been omitted, or to delete or modify any entry incorrectly inscribed therein or contrary to the truth. The Trademarks Office should obtain an order from the Judge of Provisional Matters to make the corrections mentioned in the previous paragraph.

Chapter Four:

Penalties

Article (1263):

Counterfeiting the Mark

Any person shall be liable to a term of imprisonment not exceeding two years and of a fine not less than thousand LYD (1000 Libyan Dinar) and not more than ten thousand LYD (10000 LYD) or to one of these two penalties if he commits any of the following offences:

1. Counterfeits a trademark which has been registered according to the law.
2. Uses on his products any trademark owned by another person.
3. Intentionally 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 products carrying a counterfeited mark.

Article (1265):

Precautionary Measures

The owner of the trademark or anyone who has the right of to dispose and use is allowed at any time, even if that was before filing civil or criminal action, and according to a petition supported by an official certificate proving the registration of the trademark, take out an order from the President of the Court of First Instance to take the necessary precautionary measures, in particular:

1. 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 on their arrival.
2. Imposition of 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, when necessary. 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.

Article (1266):

Expert Delegation

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 taking into consideration the time limit.

Article (1267):

Compensation of the Confined

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 stipulated in article (1266) if the applicant fails to institute his action or from the date of the issue of the conclusive judgment. In both cases, the deposit shall not be paid to the applicant only after the issue of the final judgment or after the scheduled date for the institution of the action has elapsed unless the issued judgment in the confinement action decides on the deposit issue.

Article (1268):

Order of Confiscation and Destruction

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, envelopes, packing equipment and addresses of shops 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.

Chapter Five:

Final Provisions

Article (1269):

Capacity of Investigation Officers

The officers of the competent authority who are appointed by a decision of General Public Committee shall have the capacity of investigation officers to detect the crimes contained in this law and the relevant regulations.

Article (1270):

Implementing Regulations of Trademarks

The competent authority shall issue the implementing regulations for trademarks for detailed provisions statement which shall particularly state 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 or services for the purpose of registration into categories according to its kind or quality.
4. Methods and conditions relating to publication set forth in this chapter.
5. Fees payable for the delivery of copies and certificates and any other stipulated fees.
6. Statement of the various procedures set forth in this chapter.

Article (1271):

Temporary Protection

Temporary protection is granted to a mark used on products displayed at national or international exhibitions. Such protection shall not benefit from the extension period provided for in Article (1257) of this chapter. The implementing regulations stipulated in article (1270) shall prescribe the terms, conditions and procedures for the grant of such a protection.

Book Eleven
Competition and Consumer Protection
Chapter Two
Illegal Competition

Article 1286:

Illegal Competition in Intellectual Property

The following activities fall within the framework of illegal competition:

1. Counterfeits of registered trademarks.
2. Encroachment of trade name and logo registered in the Trade Register.
3. Use of achievements of others and getting the undisclosed information in an illegal way such as spying, theft and fraud.
4. Lack of respect for rules of fees and registered industrial models.
5. Assault on copyright, adjoining rights, audio compilations and radio programs, in addition to assault and piracy on informatics systems (electronic), attempt to break its own encryption system and trying to damage informatics (electronic) programs.

Book Thirteen

General Final Provisions

Article 1358

Article (1358): Cancellation of Laws

The following Law shall be null:

1. Libya's 1953 Commercial Law and its amendment,
2. Law No. 40 of 1956 on trademarks and its amendment,
3. The act No. 73 of 1958 on weights, measures and standards,
4. The law No. 2 of 1962 on commercial data,
5. The law No. 38 of 1968 on imports and exports,
6. The law No. 65 of 1970 on implementing some provisions in respect of traders and commercial companies and supervision thereon and amendments,
7. The law No. 64 of 1971 on imports,
8. The law No. 110 of 1975 on implementing provisions related to authorities, public corporations and companies of the public sector,
9. The law No. 17 of 1977 on the organization of trade practices,
10. The law No. 8 of 1984 on rules in respect of trade and amendment,
11. The law No. 9 of 1985 on some sentences in respect of "Tasharukiat" and its amendment,
12. The law No. 8 of 1988 on sentences related to economic activity,
13. The law No. 13 of 1989 for price control and its amendment,
14. The law No. 9 of 1992 for performance of economic activities,
15. The law No. 15 of 1423 PB. on implementing some provisions related to shareholding companies wholly or partially owned by the community,
16. The law No. 4 of 1425 PB. prohibiting speculation economy and its amendment,
17. The law No. 4 of 1426 PB. on organizing the import and distribution of goods,
18. The law No. 21 of 1369 P.D. for specifying certain provisions for performing economic activities and its amendment,
19. The law No. 6 for 1372 P.D. for organizing trading agencies works,
20. The law No. 3 for 1374 P.D. on public sector companies,
21. The law No. 4 for 1372 P.D. regarding Chambers of Commerce & Industry and the General Union of Chambers,

Moreover, any judgment that violates the provisions of this law shall be null.

Article (1359):

Law Enforcement

This Law shall enter into force on the date of its publication in the Official Gazette. And the concerned parties shall commit to regularize their status in compliance with its provisions within six months from the date of its publication.

The General People's Congress

Issued in Sirte

On 13 Safar 1378 P.D. corresponding to 28 January 2010.