

Myanmar's Trademark Bill Published for Public Hearing

The latest draft of the Myanmar's Trademark Bill ("Bill") was finally published in Myanmar newspapers from 8th – 10th August 2017 for the public hearing. The Bill is being reviewed by the Draft Law Committee of the Parliament before the approval by the Parliament and if it is approved by the Parliament, it will be sent to the President for his signature and become effective on the day of its publication in the official gazette which is expected by the end of this year. Once the Bill comes into force, it will substantially change the current process of trademark protection in Myanmar which is based on common law and common practice rather than statute and establish a new regime of trademark system of the country.

Currently Myanmar does not have a trademark law. A trademark can be registered under Section 18 (f) of the Registration Act 1908 and Direction 13 of the Registration Act with the Office for Registration of Deeds by registering a Declaration of Ownership. Under the Bill, the Myanmar Intellectual Property Office which is in charge of trademark registration will be established under the Ministry of Education.

Under the Bill, Myanmar's first-to-use system will be replaced by a first-to-file system aligning Myanmar with other ASEAN countries. The Bill provides protection on trademark, service mark, collective mark, certification mark and geographical indication. A well-known mark, a trade name and a domain name are also defined and protected under the Bill.

The Bill recognizes the international classification of goods and services and this implies that the Nice Classification will be officially adopted for a trademark application and registration under the Bill. Where two persons file the applications for an identical or similar mark, the person who first files the application shall have better right. The priority filing date of a foreign application is recognized.

After filing an application, it will be preliminarily examined for formality issue followed by a substantive examination. If a trademark is found registrable, the application will be published for a 60-day period for opposition. If no opposition is filed, a registration will be granted. Registration of a mark will be effective for ten years from the filing date and can be renewed every ten years. A cancellation action is allowed for certain grounds, e.g. non-use for three consecutive years.

Importantly, an owner of a registered mark under the Registration Act must file an application for registration of the mark under the Bill within 3 years after the Bill has come into force. A duly registered Declaration of Ownership under the current system must be submitted with the application. This would preserve priority under the new system. Otherwise, the owners will lose the rights of his mark as the trademarks which are recorded under the current system will not be automatically protected under the new system according to the Bill.

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