

Insight into the protection and enforcement of intellectual property rights in Egypt

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Intellectual Property Rights ('IPR') are, without a doubt, one of the most important assets of major companies and corporations. Not only are they important for the protection of a brand, but they are also important for the protection of the rights derived from the products developed and services promoted by corporations. This is clearly demonstrated by the huge legal battles that are initiated by Fortune 500 companies disputing ownership of trademarks, a new invention or a recently developed software.

For many years, Egypt has acknowledged the importance of the protection of IPR and its direct correlation to securing a healthy environment for investments. In addition to being one of the pioneers in the promulgation of legislation that protects IPR the Egyptian Constitution guarantees the protection of Intellectual and Industrial Rights. Egyptian Laws and Regulations also seek to protect IPR. For instance, the Minister of Health Decree No. (297) of 2009 requires a registrant of a pharmaceutical product to sign an undertaking attesting to compliance with Egyptian Protection of Intellectual Property Rights Law No. (82) of 2002 ('IP Law'). Another Example is the Minister of Internal Trade's Decree No. (43) of 2016 confirming the necessity of registration of trademarks at the General Organization of Export and Import Control for the importation of certain products.

In this Article, we shall address the necessary procedures required for the protection of IPR and methods of enforcement of certain rights in Egypt; namely trademarks, copyright and patents.

Trademarks

A Trademark is defined under the IP Law as 'a logo, mark or word that is used by a certain person, company or group to differentiate their products and/or services from others in the market.' One of the common misperceptions is the assumption that registration of a trademark grants the applicant ownership of that trademark. However, registration is only considered as proof of ownership, which can be disproven. According to Egyptian law, and as established and confirmed by precedent, ownership of the trademark is established by 'first use of the mark' in the market.

In any case, registration of a trademark is necessary for the enforcement of IPR in Egypt. The owner of a trademark registration is entitled to prohibit others from registering and/or using identical and/or similar trademarks through the following:

1. opposing the registration of a similar trademark. Even though any interested party is entitled to oppose the registration of a trademark, the chances of success in case of the presence of a trademark registration is much higher;
2. initiate a raid against traders of counterfeit products (i.e. products that bear similar or identical trademark);
3. initiate direct trademark Imitation misdemeanour against traders of counterfeit products; and
4. file for compensation action sustained and profit lost as a consequence of trademark infringement.

It is worth mentioning that well known trademarks enjoy special and wider protection under Egyptian Laws. Despite the fact that there are no criteria to prove 'well known' status, it is at the Court's sole discretion to assess the trademarks and fulfilment of the so called 'well known' criteria.

Copyright

Similar to trademarks, ownership of copyrighted content is proven either by first publication or prior submission. Copyright in Egypt is divided into three sections:

1. Drawings

These include cartoon characters, creative shapes and artistic drawings. Such content is registered at the Fine Arts Sector at the Supreme Council of Culture.

2. Books

This includes books and scripts. These books are registered at the National Library.

3. Software Codes

This is mainly the software code and language of the applications and/or software. Software codes are registered at the Information Technology Industry Development Agency ('ITIDA').

Furthermore, the Agency responsible for the enforcement of copyright depends on the copywritten content. In the case of drawings and books, the Censorship on Artistic Works is the responsible agency. Meanwhile, the Investigations Bureau, with the assistance of the ITIDA, is responsible for the enforcement of copyrighted software codes.

Patents

According to the IP Law, an invention is eligible to be patented when certain conditions are fulfilled:

1. novelty;
2. inventive step; and
3. capability of economic exploitation.

Once the patent has been registered, the owner of the patented invention is entitled to prohibit others from the commercial use of such patent.

Enforcement of rights related to a patent are achieved through filing patent infringement actions, and in urgent cases injunctions. Moreover, due to the nature and complexity of patents, the Egyptian courts usually assign a technical expert to review and adjudicate on the technical aspects of such disputes (i.e. an expert in the field of the patent which is the subject of the dispute is assigned with the task of reviewing and researching whether an infringement of a claimed right has occurred).

Conclusion

The Egyptian legislator has set up a system for the protection of IPR which protects the enforcement of such rights. Although this system is incomplete, it is still undergoing change and upgrades in an attempt to reach the optimum structure for the protection of proprietary works and thereby minimising infringements and violations of such rights.

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