

Administrative Options in Kuwait for Intellectual Property Rights Enforcement

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Ensuring the protection of intellectual property rights by means of procedures for law enforcement in respect of disputes is very important.

Without real, fast and effective enforcement procedures, the legal procedures become useless, and lead to legislative frustration. Moreover, without easy implementation procedures, any intellectual property system will have no value.

The International Agreement on Trade-Related Aspects of Intellectual Property Rights (the “TRIPS Agreement”) set out the enforcement measures in domestic legislation for its member countries. It stipulates that members shall ensure that enforcement procedures are available under their law so as to permit effective action against any act of infringement of intellectual property rights covered by the TRIPS Agreement, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements. These procedures shall be applied in such a manner as to avoid creating barriers to legitimate trade and to provide for safeguards against their abuse.

The members of the World Trade Organisation (“WTO”) and signatories to the TRIPS Agreement are under an obligation to pass intellectual property laws which meet the standards for the protection and enforcement of intellectual property rights set forth in the Agreement. The TRIPS Agreement established fair and equitable procedures which enable the intellectual property right holders to take a civil judicial procedure concerning the enforcement of any intellectual property right covered by the TRIPS Agreement.

The TRIPS Agreement emphasises the administrative procedures for enforcement of intellectual property rights and confirms that parties shall have an opportunity for review by a judicial authority of final administrative decisions and will be subject to jurisdictional provisions in a member’s law.

The administrative procedure is a vital redress for any aggrieved parties in intellectual property rights violations. Accordingly, the members shall grant the administrative officers concerned with the enforcement, the capacity for judicial confiscation and physical access to establishments whose activities are infringing intellectual property rights. The authorities concerned in member states should avail the necessary facilities for these administrative officers to enable them to carry out their duties.

Kuwait is a member of the WTO and a signatory to the TRIPS Agreement; hence, it is under an obligation to pass intellectual property laws meeting the minimum standards for the protection and enforcement of intellectual property rights set forth in the Agreement. Kuwait is also a member of the World Intellectual Property Organisation (“WIPO”) since 1998.

Kuwaiti legislation has established reasonable administrative procedures for the enforcement of intellectual property rights and the Kuwait government has engaged with administrative services by accepting the filing of administrative complaints before the Ministry of Commerce and Industry. Kuwaiti Law No. (13) Of 2015 Approving The Law (System) Of Commercial Trademarks Of The States Of Co-operation Council (GCC) For The Arab Gulf Countries (“Law No. 13”) implements

these procedures. This administrative proceeding is one of the important counter defensive measures for enforcement of intellectual property rights in Kuwait.

The administrative complaints in Kuwait should be based on the Kuwait Court of Cassation principles, which is the supreme court of justice in Kuwait. Law No. 13 grants the administrative officers the right of judicial confiscation and provides the administrative inspectors with the direct enforcement authority to raid infringements targets and refer them to the judicial authority, which is the public prosecution.