

Protecting your Trademark and Copyright in Egypt

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Background

It is well known that corporations and individuals register their trademark in order to protect their brand so that competitors and infringers do not use confusingly similar or identical trademarks. Since trademarks are a means to differentiate from one product to the other and it is very much in the benefit of trademark owners to register the trademark, logos and designs that they have developed. To this effect a trademark registration creates a favorable presumption that the registrant is in fact the owner of the mark. In case of a dispute over the trademark or its registration, the person challenging the trademark registration has the burden of proof (which is a heavy one) to establish that the trademark should not have been registered due to a third party's prior use of the trademark, or that the registration was obtained fraudulently.

In other cases, where the intellectual property right is a software code, literal or artistic work, the author of such work can resort to the Egyptian Copyrights' Office to obtain a copyright certificate, as proof that the work has been registered as a copyright. Although by its definition, the rights associated to copyright exists from the moment of its creation, a copyright certificate is however a necessary requirement by the Egyptian Courts in cases claiming copyright infringement and for copyright enforcement cases. Much like trademark certificates, a copyright registration creates a favourable presumption towards the registrant of the right. Hence, in case of third party challenges as to the validity of the copyright, the burden of proof lies with the challenging party.

In order to protect trademark and copyright holders against unauthorized use of their work and brands, the Egyptian Legislature has enacted Law no. 57 of 1939 for the Protection of Trademarks and Trade Information, and the Law no. 354 of 1954 for the Protection of Copyrights. Following which, the Law no. 82 of 2002 for the Protection of the Intellectual Property Rights replaced the former laws, which governs the protection of Trademarks, Trade Secrets, Patents, Industrial Designs, and Copyrights.

Trademark Infringement

Where a third party is attempting to register an identical or confusingly similar trademark, a trademark owner has the right to file an opposition against the published trademark. Proposed trademarks are published in monthly gazettes. It is up to the brand owners to monitor the gazettes for confusingly or identical trademarks. According to the regulations in Egypt, oppositions are required to be filed within 60 days from the date of proposed trademark publication. Once a proposed trademark is opposed, an opposition board is appointed by the trademark office, and its task is to adjudicate on the parties' argument and evidence and decide on whether the registration of the proposed trademark can lead to consumer confusion with prior existing trademark rights. Opposition proceedings are an effective tool for brand owner's to stop third parties seeking to enter the market with confusingly or identical trademarks, and potentially prevent trademark infringement.

Trademark infringement can also occur in other instances whereby an entity manufactures products bearing a trademark similar or identical to another's registered mark. In such a case the infringing party has not sought to register the confusingly similar or identical trademark, but rather has affixed the disputed trademark directly to the goods and is exploiting the infringing trademark for commercial gain. In such cases, the goods are usually identified as counterfeit goods. The Egyptian legislature provides a brand owner with more than one route to legally pursue his rights. One such route is to file a complaint before the Commercial Fraud Bureau which can conduct a raid on the factory, warehouse, and/or store and seize the infringing goods. Following a raid, a sample of the seized product shall be sent to the Trademarks' Office which will be required to prepare a report as to the similarity of the trademarks. If it is determined that there is an infringement, the Public Prosecutor can impose criminal charges against the infringer for commercial fraud and the imitation of a registered trademark.

Another legal avenue which may be explored by brand owners is filing an action for unfair competition before the Economic Court, requesting for the immediate cease of manufacturing and marketing of the products bearing the confusingly similar or identical trademark. Additionally, the brand owner has the right to claim damages for the loss profit and the damages sustained to the brand, i.e. the bad publicity resulting from the low quality of the infringer's imitated products and/or the profits gained by the infringer.

It should be noted that the legal protection under the Egyptian Intellectual Property Law is not limited only to registered trademarks; it also extends to unregistered marks and grants owners of a well-known trademark the legal right to protect their mark, even if the trademark is not registered in Egypt.

Copyright Infringement

Copyright infringement can occur in various forms. For literary works, infringement occurs when the work is published by a third party and without the consent of the author. In such a case the author of the work may resort to the competent court to request the withdrawal of the work. In addition the author would also be entitled to claim damages sustained as a result of the unauthorized publication of his work, and claim the profits made by the infringer.

Stealing and copying of software codes is another form of copyright infringement. The Egyptian legislature provides software developers various methods to enforce their rights. Right holders can file a complaint to the the General Administration of Copyrights Investigation, which in turn investigates the incident in cooperation with the Ministry of Communication and Information Technology and the Ministry of Culture. If it is discovered that an infringement has occurred the matter will be referred to the public prosecutor whereby criminal charges will be imposed. The right holder may alongside the criminal action file a civil suit claiming compensation and remedies.

Summary

Enforcement actions and civil claims are effective tools for the protection and enforcement of intellectual property rights in Egypt. The general policy is directed towards the protection of acquired rights and the encouragement of investments in Egypt, and what better way to encourage investors than to protect the rights derived from their practice and business.